

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 973

IN THE MATTER OF:

Served September 11, 1969

Order of Suspension and to)
Show Cause Directed Against)
Ira F. Gadd, d/b/a Columbia)
Sightseeing Company.)

Docket No. 193

Ira F. Gadd, doing business as Columbia Sightseeing Company, was granted WMATC Certificate of Public Convenience and Necessity No. 16 with authority to operate:

IRREGULAR ROUTES:

Passengers and their baggage:

SPECIAL OPERATIONS:

Round-trip, or one-way sightseeing tours;

From points in the City of Alexandria and Arlington County, Virginia, to points in the District of Columbia, and points in the City of Alexandria, Arlington and Fairfax Counties, Virginia, via the District of Columbia.

RESTRICTED: to the performance of such transportation in vehicles having a seating capacity of not more than seventeen (17) passengers.

On recommendation of the Commission staff, Order No. 768 was issued January 10, 1968, directing Gadd to show cause why said Certificate should not be revoked on grounds of alleged violations of certificate limitations and Commission regulations. Specifically, the staff charged that Gadd was originating tours within the District of Columbia and that he had failed to file tariffs and reports as required by the Commission.

As a result of Order No. 768, Gadd offered, and the Commission in Order No. 782 accepted, a Settlement and Proposal of Adjustment, in which he admitted that he had conducted operations outside the scope of his certificate and promised to cease and desist all such unauthorized activity. It was understood that any continuation of these activities would constitute a willful failure to comply with an order of the Commission, and a provision to that effect was included in Order No. 782.

On July 26, 1968, Gadd applied to amend and expand Columbia Sightseeing Company's certificate to permit origination of tours in the entire Metropolitan District, and to remove all passenger restrictions. In the course of hearings on this application, Gadd testified that he had continued to solicit and pick up passengers without proper lawful authority, to wit, within the District of Columbia. In Order No. 890, the Commission denied his application on the grounds that applicant was not fit to be given such authority, as evidenced by his willful and deliberate violations of his written pledge and the Commission's Order No. 782.

The Commission also issued Order No. 891 directing Gadd to appear and show cause why his actions should not be ground for revocation of his certificate under Article XII, Section 4(g) of the Compact. On April 21, 1969, a hearing was convened in which Gadd testified that he had been and was continuing to act in knowing contravention of Commission orders, and that he intended to continue doing so in the future.

Respondent's sole defense was that he is unable to make a living under the terms of his existing certificate. We are not able to accept this as justification for Gadd's illegal acts.

First, it should be kept in mind that Gadd's certificate was issued pursuant to the "grandfather" provisions of the Compact, and only as a result of a directive by the Court of Appeals that such certification be issued [see Gadd v. WMATC, 347 F2d 791 (D.C. Cir. 1965)]. Therefore, the fact of his possession of a certificate carries no implication that the Commission has ever made a determination that Gadd could earn a reasonable return pursuant to that certificate.

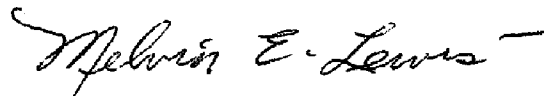
Second, the issue of inability to make a reasonable living was properly raised by Gadd in his application for an enlarged certificate. When that application was denied in Order No. 890, no appeal was taken.

Third, even if the issue had not been settled in the prior proceeding, we do not consider that the economic factor alone would constitute justification for willful and deliberate violation of the Compact or of lawfully binding Commission orders. Therefore, inasmuch as no sufficient cause has been shown for these violations, we will revoke the Certificate of Public Convenience and Necessity of Ira B. Gadd, d/b/a Columbia Sightseeing Company.

Under the Compact, any person affected by an order of the Commission has 30 days in which to petition the Commission for reconsideration. We will make the revocation of this certificate effective 40 days after the issuance of this order, so that Gadd may continue to operate until he has had an opportunity to take advantage of all the administrative steps available to him and to give the Commission adequate time to respond to further petitions on Mr. Gadd's part, should he choose to make any.

THEREFORE, IT IS ORDERED that Certificate of Public Convenience and Necessity No. 16 issued to Ira F. Gadd, d/b/a Columbia Sightseeing Company be, and it is hereby, revoked, effective October 21, 1969.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, reading "Melvin E. Lewis".

MELVIN E. LEWIS
Executive Director